

to collect refuse without the approval of Toledo City Council and without the approval of voters by referendum as this is a tax on property owners.

2. This class action seeks declaratory and equitable relief, a preliminary and permanent injunction, and attorney's fees from Defendant for amending T.M.C. § 963.03, which, when in effect, created a wrongful tax outside the limits prescribed by the Ohio Revised Code, the Toledo City Charter, and the Ohio Constitution.

II. Jurisdiction and Venue

3. This Court has jurisdiction over this action under O.R.C. § 2305.01, the common law of the State of Ohio, and Civ. R. 23.

4. Venue lies in this forum because Plaintiff and the class she represents are residents and property owners within the city of Toledo, Lucas County, Ohio, who are required to pay a tax on their property for refuse collection, or to face penalty, and the Defendant is the City of Toledo, a municipality located within Lucas County, Ohio.

III. Parties

5. Plaintiff Karen Shanahan lived, at all times material to this Complaint, in Toledo, Lucas County, Ohio at 3633 Denise Drive.

6. Defendant City of Toledo is an Ohio Municipal Corporation located with Lucas County, Ohio, with its offices located at One Government Center, 640 Jackson, Suite 2200.

IV. Class Action Allegations

7. Plaintiff's class consists of all current and former property owners in the city of Toledo who are or were required to pay a tax on their property for refuse collection without voter approval by referendum or Toledo City Council approval for the

period of about April 28, 2007, until the present, and including, for the purposes of injunctive and declaratory relief, future property owners in the City of Toledo and renters, past and future, who pay the tax by contract with their landlords.

8. Plaintiff's class consists of all future property owners in the city of Toledo who will be required to pay a tax on their property for refuse collection as set forth in T.M.C. § 963.03.

9. The only property owners exempt from this tax are commercial businesses, institutions, or multi-family dwelling units of five (5) or more units that exceed 6 approved collectible items as defined by the Rules – Refuse Collection, Appendix B, of the Toledo Municipal Code.

10. On information and belief, Plaintiffs' class includes around 100,000 housing units, but this class is limited only to those who pay this tax.

11. This action is properly maintained as a class action because in all pertinent aspects the Plaintiff and all other similarly situated individuals have predominately identical claims.

12. This tax is not completely identical for all members of the Plaintiffs' class because some individuals own multiple unit apartment buildings, and some individuals receive a discount for recycling.

13. Each member of the Plaintiffs' class is required to pay this tax or face the following penalties by the city: (1) terminate water service; (2) forward the account to an outside collection agency; (3) transfer the delinquency to any other property owned by the account holder; (4) bring an action at law for collection; (5) or place a lien on the property.

14. Any entitlement under the common law of Ohio of Named Plaintiff to compensatory damages and declaratory and equitable relief would be identical, except for amount, to the entitlement of the Plaintiffs' class.

15. The entitlement of all members of Plaintiffs' class under the common law of Ohio to such remedies raises identical legal questions: whether Defendant's action constitutes an improper tax and administrative action because it did not receive the approval of Toledo City Council or the approval of the voters.

16. The Named Plaintiff representative shares the same interest as the Plaintiffs' class and will be entitled under the common law of Ohio to such remedies under nearly identical factual and legal standards as the remainder of the Plaintiffs' class.

17. The Plaintiffs' named representative is dedicated to securing appropriate relief for similarly situated members of Plaintiffs' class and will fairly and adequately protect the interests of the class.

18. The amount of the tax paid by one taxpayer is too small to attract legal representation on an individual basis or to risk the costs associated with litigation on an individual basis.

19. Upon information and belief, no other litigation under the common law of Ohio has already been commenced by individual members of Plaintiffs' class for similar allegations.

V. Facts

20. On or about April 28, 2007, Defendant, the City of Toledo, enacted Sections 208-210, of Appendix B, Rules and Regulations Issued by the Director of Public

Service, Regulations Governing Refuse Collection, under the authority of T.M.C. § 963.23 and Section 104 of the Toledo City Charter, to go into effect May 28, 2007.

21. Section 208, entitled “Fees,” states the following:

For the collection of refuse from any dwelling, building or other property permitted her within these regulations, the property owner shall pay a refuse fee of \$5.50 per month. If the structure consists of multiple units, the fee shall be \$5.50 per month per unit. Property owners who return a signed pledge card or electronically register to participate in the City of Toledo Curbside Recycling Program shall pay a refuse fee of \$3.00 per month. Where the structure consists of multiple units and the property owner recycles at each unit, the fee shall be \$3.00 per month per unit.

22. Section 209, entitled “Collection of Fees,” states the following:

The City shall include the monthly refuse fee on the property owner’s City water & sewer bill and the property owner shall pay the fee in the manner and amount specified on the bill. A property owner may, by agreement, require a tenant or lawful occupant to pay to the City the monthly refuse fee; however, in the event of nonpayment, the property owner remains responsible for paying the fee. If any fees or miscellaneous charges relating to refuse service are not paid in full on or before the due date noted on the bill provided by the City, an amount equal to five percent (5%) of the amount billed shall be added to the total amount owed by the customer.

23. Section 210, entitled “Delinquent Fees,” states the following:

When charges for refuse service are not paid when due, the City may:

- (a) Terminate water service to the property pursuant to existing written policy;
- (b) Forward the account for collection by an outside collection agency;
- (c) Transfer the delinquency to any other property owned by the account holder that receives service from the Department of Public Utilities;
- (d) Bring an action at law for the collection of the delinquent amount; or
- (e) Certify the charges, together with any penalties, to the County Auditor, who shall place the certified amount on the real property tax duplicate of the property receiving, directly or indirectly, refuse services from the City. The amount certified shall be a lien on the property served from the date

placed on the list and duplicate and shall be collected in the same manner as other taxes, except that, notwithstanding section 323.15 of the Ohio Revised Code, a county treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid refuse fees and associated penalties.

24. The collection of money from these regulations is placed in Defendant's general fund and is not placed in trust for costs associated with refuse collection.

25. Defendant enacted sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection, for the purpose of making up a deficiency in the general fund.

26. Defendant uses its water billing statements as a vehicle for collecting these monies in violation of Chapter 743 of the Ohio Revised Code.

27. T.M.C. § 963.23 and Section 104 of the Toledo City Charter do not permit the Director of Public Services to collect money from property owners for refuse collection.

28. Toledo City Council did not approve sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection.

29. Defendant wrongfully enacted sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection, due to the lack of approval by Toledo City Council or by the voters.

30. Defendant's wrongful enactment of sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection, constitutes an unjust holding of the Plaintiff's class monies.

31. Only property owners in the City of Toledo must pay the amounts listed in

paragraph 19 of this Complaint except for those who fall within the exception noted in paragraph 7 of this Complaint regardless of whether refuse is collected.

32. Toledo City Council voted to repeal Sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection, to go into effect after April 30, 2008.

33. On March 25, 2008, Toledo City Council amended T.M.C. § 963.03, to include a new a tax on property owners for refuse collection to go into effect after April 30, 2008.

34. On April 4, 2008, Mayor Carleton S. Finkbeiner approved T.M.C. § 963.03 to go into effect after April 30, 2008.

35. T.M.C. § 963.03(2)(b) states:

After April 30, 2008 for the periodic disposal of garbage and rubbish from any dwelling, restaurant, retail store, apartment house or office building, the property owner shall pay a monthly refuse fee based on the following schedule, provided that where the structure consists of multiple units, the monthly fee shall be per unit:

	Non-recycle	Recycle
May 1, 2008 – April 30, 2009	\$7.00	\$2.00
May 1, 2009 – April 30, 2010	\$8.50	\$1.00
Beginning May 1, 2010	\$10.00	- 0 –

For those property owners who pledge to recycle, the Director of Public Service may establish regulations governing how recycling pledges are made and enforced. The Director of Public Service is also authorized to establish a fine for those property owners who break pledges to recycle. The Director of Public Service may establish regulations governing waivers of the fee for owners of structures who have in force a contract with a commercial hauler to collect garbage and rubbish from their premises.

36. T.M.C. § 963.03(2)(c) states:

The City shall include the monthly refuse fee on the property owner's City water and sewer bill and the property owner shall pay the fee in the manner and amount specified on the bill. A property owner may, by agreement, require a tenant or lawful occupant to pay to the City the monthly refuse fee; however, in the event of nonpayment, the property owner remains responsible for paying the fee. If any fees or miscellaneous charges relating to refuse service are not paid in full on or before the due date noted on the bill provided by the City, an amount equal to five percent (5%) of the amount billed shall be added to the total amount owed by the customer.

37. T.M.C. § 963.03(2)(d) states:

When charges for garbage and rubbish disposal service are not paid when due, the City may:

(1) Terminate water service to the property pursuant to existing written policy;

(2) Forward the account for collection by an outside collection agency;

(3) Transfer the delinquency to any other property owned by the account holder that receives service from the Department of Public Utilities.

(4) Bring an action at law for the collection of the delinquent amount;

(5) Certify the charges, together with any penalties, to the County Auditor, who shall place the certified amount on the real property tax duplicate of the property receiving, directly or indirectly, the garbage and rubbish disposal services of the City. The amount certified shall be a lien on the property served from the date placed on the list and duplicate and shall be collected in the same manner as other taxes, except that, notwithstanding section 323.15 of the Revised Code, a county treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid refuse fees and associated penalties.

38. The collection of money from these regulations will be placed in Defendant's general fund and will not be placed in trust for costs associated directly with refuse collection.

39. Defendant enacted T.M.C. § 963.03 for the purpose of making up a deficiency in the general fund.

40. Defendant uses its water billing statements as a vehicle for collecting these monies in violation of Chapter 743 of the Ohio Revised Code.

41. Title VII of the Ohio Revised Code and the Toledo City Charter do not permit Defendant to levy additional taxes on property owners for refuse collection as required by Ohio Const. Art. XII, § 2.

VI. Claims for Relief

A. First Count/ Declaratory Judgment

42. Plaintiff incorporates, as if fully realleged, paragraphs 1-41 of this Complaint.

43. Plaintiff seeks a declaratory judgment against Defendant because sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection, is invalid under the statutes and constitution of the state of Ohio.

44. Plaintiff seeks a declaratory judgment against Defendant because T.M.C. § 963.03 is invalid under the statutes and constitution of the state of Ohio.

B. Second Count/ Preliminary and Permanent Injunction

45. Plaintiff incorporates, as if fully realleged, paragraphs 1-44 of this Complaint.

46. Plaintiff seeks a preliminary and permanent injunction against Defendant

because paragraphs sections 208-210, Appendix B, Rules and Regulations Issued by the Director of Public Service, Regulations Governing Refuse Collection, is invalid under the statutes and constitution of the state of Ohio.

47. Plaintiff seeks a preliminary and permanent injunction against Defendant because T.M.C. § 963.03 is invalid under the statutes and constitution of the state of Ohio.

C. Third Count/ Unjust Enrichment

48. Plaintiff incorporates, as if fully realleged, paragraphs 1-47 of this Complaint.

49. By enacting an invalid tax, then collecting monies from property owners, Defendant has unjustly enriched itself by collecting and holding monies that properly belong to those property owners.

50. Under the doctrine of equitable restitution, the Plaintiff and the Plaintiff's class are therefore entitled to a refund of the entire amount collected under this regulation.

VI. Prayer for Relief

WHEREFORE, Plaintiff's pray judgment against Defendant;

- a. declaring that Defendant has enacted the above regulation improperly; and
- b. ordering such equitable relief, including awarding a preliminary and permanent injunction; refunding the money to Plaintiff and Plaintiff's class; more than \$25,000 in damages; prejudgment and post judgment interest; reasonable attorneys fees and costs from the total judgment amount; and such other relief as the Court may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Complaint has been served on the individual listed below by delivery, this ___ day of April, 2008:

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